

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN MARK CLARKE,)
Petitioner,) CASE NO. C07-795-JLR-MJB
v.)
WASHINGTON STATE,) REPORT AND RECOMMENDATION
Respondent.)

Petitioner is a state prisoner who has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has been granted leave to proceed *in forma pauperis*; however Respondent has not been served with a copy of the petition due to defects therein.

In screening the habeas petition, the court determined that Petitioner failed to name his custodian as a respondent in this matter, which deprives the district court of jurisdiction. *See Stanley v. California Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). The court also determined that Petitioner currently has a personal restraint petition pending in the Washington Court of Appeals, Division I (*Clarke v. Washington*, Case No. 599101-I). *See* Dkt. # 4. Thus, it appears that Petitioner has failed to exhaust his state remedies, which is a prerequisite to the filing of a habeas petition. *See* 28 U.S.C. § 2254(b). On June 13, 2007, this Court issued an Order to Show Cause that advised Petitioner of these deficiencies and gave him thirty (30) days to show why this action should not be dismissed. Dkt. # 5.

REPORT AND RECOMMENDATION

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1 Although Petitioner has filed three separate documents in response to the Order to Show
2 Cause (Dkt. ## 6, 7, 8), he has neither named the proper respondent nor shown that the state
3 court has entered a ruling on his pending personal restraint petition. A federal court should not
4 entertain a habeas petition while other remedies are pending in the state courts because to do so
5 would thwart judicial economy. *See United States v. Deeb*, 944 F.2d 545, 548 (9th Cir. 1991).
6 Thus, the court concludes that the instant habeas petition is premature and should be dismissed
7 without prejudice. A proposed Order accompanies this Report and Recommendation.

8 DATED this 17th day of July, 2007.

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11 MONICA J. BENTON
12 United States Magistrate Judge
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